

MINUTES
SOUTH DAKOTA OPEN MEETINGS COMMISSION

1st Meeting
November 17, 2004
Sioux Falls Ramkota Hotel and Conference Center

Members Present: Vince Foley, Vaughn Beck, Lisa Rothschadl, Glenn Brenner and John Steele

Persons in attendance: Larry Long, South Dakota Attorney General, Diane Best Assistant Attorney General, Susan Smith, South Dakota Newspaper Association, Paul Holtsclaw (concerning City of Lead matter)

Vince Foley called the meeting to order.

Motion by Steele, second by Brenner to elect Vince Foley as Chair. The motion carried unanimously.

Diane Best appeared and requested that the commission designate its principal place of business. The Commission has no formal offices, but the Attorney General's Office provides assistance from the office in Pierre. Motion by Steele, second by Rothschadl to designate the principal place of business as the Office of Attorney General in Pierre. This will be used for posting agendas and other business.

Motion by Brenner, second by Rothschadl to appoint Diane Best to assist the Commission with procedure. The motion carried unanimously.

Discussion was held regarding standard complaint procedures. Foley stated that a 15-day response time should be appropriate. If agencies want to respond quicker they can do that to get their matters handled at scheduled meetings coming up or for conducting the necessary business of the public entity. Foley also suggested that extensions of time be granted liberally. Beck suggested that extensions be granted for good cause up to 10 days. Steele noted that for additional time they should not need to go a good cause standard. Motion by Beck, second by Brenner to allow for extension of time at the discretion of the Chair when agencies indicate that they need more time to gather information in response to complaints. The motion carried unanimously.

Best suggested that a list of minimum criteria be developed for filing complaints under SDCL ch. 1-25 and that the procedures be put on the Attorney General's website and generally circulated. For example, 1-25-6 requires that a criminal complaint be filed in order to invoke jurisdiction of Board. Discussion was held on the type and nature of complaint required for the criminal complaint. Foley noted that in Codington County, the SA drafts complaints and citizens sign them. Steele explained that the SA has more involvement in Aurora County.

Also, Best pointed out that referrals should include agendas and minutes and be copied to the public agencies in question. Responses should be copied to the complainants. Motion was made and seconded to have Best make a list of proposed minimum criteria and circulate for Board approval. The motion carried unanimously.

Best presented the draft "Open Meeting Pamphlet" for review. The Municipal League, SD Newspaper Association and others developed the pamphlet. The Newspaper Association has agreed to publish it. Steele suggested that it include a comment regarding the issue of whether email constitutes open meetings. If they do constitute open meetings, then a cautionary statement in that regard would be advisable in the pamphlet. Foley recommended that the Commission procedures be inserted in the pamphlet.

Motion by Brenner, second by Rothschild that the Commission recommend that the Commission procedures and an email advisory be added to the Open Meeting Pamphlet. Beck moved to amend the motion by adding a statement that the contact for the Commission should be through the Office of Attorney General. The motion (as amended) was carried unanimously.

The pending complaint regarding City of Lead was addressed. (04-01) Foley stated that the Commission needs more facts. He asked Best to address the complaint more specifically. Best explained that it involves three basic issues. The first issue is whether a firefighter called into an executive session was there for personnel purposes or for discussion of fire equipment. The record does not include a statement from the firefighter who was called into the meeting. The second issue pertains to the "reorganization" of city personnel at various meetings in the spring and summer of 2004. The third issue pertained to the question of whether a short-term license to sell alcohol by at the Opera House was on the agenda before the City decided the issue. The agenda wasn't included in the complaint or response.

Brenner indicated that perhaps if there is one violation requiring censure, the Board could issue a determination without extensive findings on all claims. Steel stated that public entities might refuse to tell details for confidentiality reasons. Foley stated that the law requires a criminal investigation, yet privileged information can be at issue.

In regard to processing the Complaint, Foley stated that the Commission "shall" reprimand if a violation occurred. Although there is not a requirement to do so, the group could include findings if there is no violation. That would help serve as guidance for others too.

Brenner addressed the reorganization issue. It appears that reorganization was discussed in executive session on Sept 13, 2004 and the minutes didn't reflect that. The Sept. 20, 2004

minutes referred to the past discussion, but the Sept. 13 minutes weren't amended.

Foley stated that it is not clear if the personnel issue involved more than employee performance.

Brenner stated that it looks like the City came out of executive session and discussed the Opera House issue immediately.

Steele questioned whether the Opera House item must be posted 24 hours in advance. There are almost always additional items to be handled.

Foley stated that to take action, the 24-hour notice is required, but public entities may talk about the issue without voting. Except for emergencies when they can vote.

Foley noted that the complainant was present. Although Foley stated that complainants might or may not be heard on future complaints he pointed out that the complainant had driven clear across the state to be heard.

Complainant Paul Holtsclaw stated that the city is discussing "everything in the world in executive session." He wishes there was a monitor. He didn't know an agenda was needed to process complaints; City may not always have copies of the agenda available.

Foley stated that it isn't clear what the City was doing in terms of reorganization.

Holtsclaw explained that the city had appointed a city administrator and was using him as a city manager. They had changed water and sewer duties so they are under the street department. Further, they changed the functions of how the departments operate within the City. The police and fire departments are now under the police chief. In response to questioning, he stated that Harley Lux was the former finance officer, but the duties have now changed so that a city administrator is handling them.

Foley asked for a motion for the Commission to send out a letter seeking more information. Motion by Steele, second by Beck to ask for more investigation. Discussion was held regarding the letter and whether it should call for agendas and additional documentation on the City reorganization. For example, what date the Fire Dept. was placed under the supervision of the Police Department. Motion carried unanimously to send out the letter,

Best explained that the second complaint (04-02) was not ready for consideration since a signed and notarized complaint hadn't been sent in and no response had been received.

Consensus to dispense with agenda item 6 on general discussion of open meeting issues. Motion by Brenner, second by Steele to adjourn. Meeting adjourned.

Attachments to minutes file: (1) Agenda (2) pamphlet entitled "Conducting the Public's Business in Public."



Vince Foley
Chairman